

LIBRARIES AND INFORMATION SERVICES DIVISION[286]

Adopted and Filed

Rule making related to waivers

The Commission of Libraries hereby amends Chapter 10, “Waivers or Variances from Administrative Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.52(4).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

These amendments update Chapter 10 in accordance with changes to Iowa Code section 17A.9A as required by 2020 Iowa Acts, House File 2389, section 10. The legislation called for deletion of the word “variance” when the word is used in relation to “waiver.” Amendments are also made relating to submission of information regarding waivers on the Legislative Services Agency’s website.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on April 21, 2021, as **ARC 5584C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Commission on October 14, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 286—Chapter 10.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on December 8, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **286—Chapter 10**, title, as follows:

WAIVERS ~~OR~~ VARIANCES FROM ADMINISTRATIVE RULES

ITEM 2. Amend rule 286—10.1(17A) as follows:

286—10.1(17A) Scope of chapter. This chapter outlines a uniform process for the granting of waivers ~~or~~ **variances** from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

ITEM 3. Amend rule 286—10.2(17A) as follows:

286—10.2(17A) Definitions.

“*Commission*” means the commission of libraries established by Iowa Code section 256.52.

“*Division*” means the division of libraries and information services of the department of education.

“*Person*” means an individual, library, government or governmental subdivision or agency, partnership or association, or any legal entity.

“*Waiver ~~or~~ variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

ITEM 4. Amend rule 286—10.3(17A) as follows:

286—10.3(17A) Applicability.

10.3(1) The commission may grant a waiver ~~or~~ **variance** from a rule adopted by the commission only if (1) the commission has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver ~~or~~ **variance** from the rule from which waiver ~~or~~ **variance** is requested; and (3) the requested waiver ~~or~~ **variance** is consistent with applicable statutes, constitutional provisions, or other provisions of law.

10.3(2) No waiver ~~or~~ **variance** may be granted from a requirement which is imposed by statute.

ITEM 5. Amend rule 286—10.4(17A) as follows:

286—10.4(17A) Commission discretion. The decision on whether the circumstances justify the granting of a waiver ~~or~~ **variance** shall be made at the discretion of the commission upon consideration of all relevant factors. Each petition for a waiver ~~or~~ **variance** shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

10.4(1) Criteria for waiver ~~or~~ variance. In determining whether a waiver ~~or~~ **variance** should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver ~~or~~ **variance** is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The commission may, in response to a completed petition, grant a waiver ~~or~~ **variance** from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver ~~or~~ **variance** is requested;

b. The waiver ~~or~~ **variance** from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

10.4(2) *Special waiver ~~or variance~~ rules not precluded.* These uniform waiver ~~and variance~~ rules shall not preclude the commission from granting waivers ~~or variances~~ in other contexts if a statute or other rule authorizes the commission to do so and the commission deems it appropriate to do so.

ITEM 6. Amend rule 286—10.5(17A) as follows:

286—10.5(17A) Requester’s responsibilities in filing a petition for waiver ~~or variance~~.

10.5(1) *Application.* All petitions for waiver ~~or variance~~ must be submitted in writing to the State Library, Ola Babcock Miller Building, 1112 E. East Grand Avenue, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

10.5(2) *Content of petition.* A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester:

a. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.

b. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.

c. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~ under each of the four criteria specified in paragraphs “a” through “d” of subrule 10.4(1). 10.4(1) “a” through “d.”

d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.

e. A history of any prior contacts between the commission and the petitioner or between the division and the petitioner within the past five years.

f. Any information known to the requester regarding the treatment of similar cases by the commission.

g. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver ~~or variance~~.

h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver ~~or variance~~.

10.5(3) *Burden of persuasion.* When a petition is filed for a waiver ~~or variance~~ from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise the commission’s discretion to grant the petitioner a waiver ~~or variance~~.

ITEM 7. Amend rule 286—10.7(17A) as follows:

286—10.7(17A) Commission’s responsibilities regarding petition for waiver ~~or variance~~.

10.7(1) *Additional information.* Prior to issuing an order granting or denying a waiver ~~or variance~~, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on the commission’s own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and the commission.

10.7(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver ~~or variance~~ of a rule filed within a contested case; (2) when the commission so provides by rule or order; or (3) when a statute so requires.

10.7(3) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

10.7(4) Conditions. The commission may place any condition on a waiver ~~or variance~~ that the commission finds desirable to protect the public health, safety, and welfare.

10.7(5) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

10.7(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

10.7(7) Time for ruling. The commission shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

10.7(8) When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

10.7(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

ITEM 8. Amend rule 286—10.8(17A) as follows:

286—10.8(17A) Public availability. All orders granting or denying waivers ~~and variances~~ under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver ~~or variance~~ and orders granting or denying a waiver ~~or variance~~ petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

ITEM 9. Amend rule 286—10.9(17A) as follows:

286—10.9(17A) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver ~~or variance~~ issued by the commission pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the commission issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with any conditions contained in the order.

ITEM 10. Amend rule 286—10.10(17A) as follows:

286—10.10(17A) Violations. Violation of conditions in the waiver ~~or variance~~ order is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

ITEM 11. Amend rule 286—10.11(17A) as follows:

286—10.11(17A) Defense. After the commission issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

ITEM 12. Amend rule 286—10.12(17A) as follows:

286—10.12(17A) Judicial review. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. Judicial review of the decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

ITEM 13. Amend rule 286—10.13(17A) as follows:

286—10.13(17A) Summary reports. Submission of waiver information. ~~Semiannually, the division shall prepare a summary report identifying~~ Within 60 days of granting or denying a waiver, the commission shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied by the commission, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the ~~report~~ submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself. ~~Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.~~

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/3/21.